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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/768,770	01/29/2004	Richard A. Gambale	B0410/7280D1 7050		
22832 7590 02/22/2007 Kirkpatrick & Lockhart Preston Gates Ellis LLP STATE STREET FINANCIAL CENTER One Lincoln Street BOSTON, MA 02111-2950			EXAMINER		
			AZPURU, CARLOS A		
			ART UNIT	PAPER NUMBER	
•			1615		
			MAIL DATE	DELIVERY MODE	
			02/22/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)
10/768,770	GAMBALE ET AL.
Examiner	Art Unit
Carlos A. Azpuru	1615

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The MAILING DATE of this communication appe	ars on the cover sheet with the	correspondence add	ress
THE REPLY FILED 05 February 2007 FAILS TO PLACE THIS	APPLICATION IN CONDITION FO	R ALLOWANCE.	
1. The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a No a Request for Continued Examination (RCE) in compliance time periods:	ving replies: (1) an amendment, a tice of Appeal (with appeal fee) in the with 37 CFR 1.114. The reply m	ffidavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)
 a) The period for reply expires 6 months from the mailing date b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire is 	dvisory Action, or (2) the date set fortlater than SIX MONTHS from the mailing	ng date of the final rejecti	on.
Examiner Note: If box 1 is checked, check either box (a) or (TWO MONTHS OF THE FINAL REJECTION. See MPEP 70		E FIRST REPLT WAS F	ILED WITHIN
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of extunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	tension and the corresponding amoun shortened statutory period for reply original than three months after the mailing d	t of the fee. The appropr ginally set in the final Offi	iate extension fee ce action; or (2) as
2. The Notice of Appeal was filed on Acsion A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any external Notice of Appeal has been filed, any reply must be filed AMENDMENTS	nsion thereof (37 CFR 41.37(e)), t	o avoid dismissal of th	ns of the date of ne appeal. Since
3. The proposed amendment(s) filed after a final rejection,	· · ·		ecause
(a) They raise new issues that would require further co		TE below);	
(b) ☐ They raise the issue of new matter (see NOTE belo (c) ☐ They are not deemed to place the application in bet	• •	educina or simplifyina	the issues for
appeal; and/or	ter form for appear by materially in	saucing or simplifying	tile issues for
(d) They present additional claims without canceling a	corresponding number of finally re	jected claims.	
NOTE: See Continuation Sheet. (See 37 CFR 1.1	16 and 41.33(a)).		
4. The amendments are not in compliance with 37 CFR 1.13	21. See attached Notice of Non-C	ompliant Amendment	(PTOL-324).
5. Applicant's reply has overcome the following rejection(s)	: 35 USC112, first paragraph; obv	iousness-type double	patenting.
6. Newly proposed or amended claim(s) would be al non-allowable claim(s).			
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is provided to the control of the co		rill be entered and an e	explanation of
The status of the claim(s) is (or will be) as follows: Claim(s) allowed: <u>1-13 and 33-42</u> .	·	•	
Claim(s) objected to:			
Claim(s) rejected: 43-45.			
Claim(s) withdrawn from consideration:	,		
AFFIDAVIT OR OTHER EVIDENCE		1-4: f A1	
 The affidavit or other evidence filed after a final action, bu because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e). 	t before or on the date of filing a r d sufficient reasons why the affida	vit or other evidence i	or be entered s necessary and
 The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to on showing a good and sufficient reasons why it is necessary 	vercome all rejections under appo	eal and/or appellant fa	ils to provide a
10. The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	n of the status of the claims after	entry is below or attacl	hed.
11. The request for reconsideration has been considered but	t does NOT place the application	in condition for allowa	nce because:
12. Note the attached Information Disclosure Statement(s). 13. Other:	(PTO/SB/08) Paper No(s)	Cour. S	0 -
		Carlos A. Azpuru Primary Examiner Art Unit: 1615	KU

U.S. Patent and Trademark Office PTOL-303 (Rev. 08-06)

Continuation Sheet (PTO-303)

Continuation of 3. NOTE: New claims 43-45 raise issues of new matter. Specifically, no support could be found for the proximal opening of claim 43. In claim 44, the lumen referred to in the claims should be in the bellows, not the spring (see page 10, lines 20-23). With regard to claim 45, while the desprition of the central tapered cavity at page 21, lines 3-10, nothing could be found concerning the retention of the drug releasing compound within it..